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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/724,795 | 12/01/2003 | Robert H. Murray | MSD01 | 3701 |

7590 07/16/2004

Robert H. Murray
52 Manor Hill Drive
Fairport, NY 14450

EXAMINER

CEGIELNIK, URSZULA M

| ART UNIT | PAPER NUMBER |
|----------|--------------|
|----------|--------------|

3712

DATE MAILED: 07/16/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

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| | | | |
|------------------------------|--|--------------------------------------|--|
| Office Action Summary | Application No. 10/724,795 | Applicant(s) MURRAY ET AL. | |
| | Examiner Urszula M Cegielnik | Art Unit 3712 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 May 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-29 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claim 1-19, drawn to a toy balloon closure and sealing device, classified in class 446, subclass 220.
- II. Claims 20-29, drawn to a toy balloon closure and sealing device, classified in class 24, subclass 30.5S.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because the combination does not require a repulsive taste agent. The subcombination has separate utility such as an anti-chewing agent for puppies, i.e., GRANNICK'S BITTER APPLE® deterrent.

Because these inventions are distinct for the reasons given above and the search required for Group I is not required for Group II, restriction for examination purposes as indicated is proper.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention (i.e. Group I or II) to be examined even though the requirement be traversed (37 CFR 1.143).

Remarks

The requirement for the election of species filed 30 March 2004 has been withdrawn. All the species directed to invention which does not require the repulsive taste agent will be examined. The restriction requirement as filed 30 March 2004 and reproduced above still stands. The election made by Applicant filed 13 May 2004 is considered to be improper. Applicant is required to elect either Group I or II. Group I, claims 1-19, as explained above, do not require the use of a repulsive taste agent. Group II, claims 20-29, on the other hand, do require a repulsive taste agent. Specifically, independent claim 20 recites this limitation within the body of the claim and stands alone. While independent claim 21, does not recite the repulsive taste agent, it is included in claims 23, and 26-29. Although claims 22, 24, and 25 do not include this limitation, it is depends from the same independent claim as those claims which do recite this limitation. Therefore, claims 21-29 as well as claim 20, are grouped together as Group II.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Urszula M. Cegielnik whose telephone number is 703-306-5806. The examiner can normally be reached on Monday through Friday, from 5:30AM - 2:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Derris H. Banks can be reached on 703-308-1745. **The fax phone number**

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for the organization where this application or proceeding is assigned is 703-872-9306 for both regular and After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to Customer Service at 703-306-5648.

Urszula M. Cegielnik
Assistant Examiner
Art Unit 3712

A handwritten signature in black ink, appearing to read 'D. H. Banks', followed by a long horizontal line extending to the right.

DERRIS H. BANKS
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700